

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

**FILED BY CLERK**  
**OCT -9 2008**  
COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

JAMES J. RUNYON,	)	2 CA-CV 2008-0080
	)	DEPARTMENT A
Petitioner/Appellant,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 28, Rules of Civil
THE STATE OF ARIZONA,	)	Appellate Procedure
	)	
Real Party in Interest/Appellee.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20081972

Honorable John S. Leonardo, Judge

AFFIRMED

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Harriette P. Levitt	Tucson
	Attorney for Petitioner/Appellant

Barbara LaWall, Pima County Attorney	
By Jacob R. Lines	Tucson
	Attorneys for Real Party in Interest/Appellee

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H O W A R D, Presiding Judge.

¶1 Appellant/petitioner James Runyon appeals from the superior court’s denial of special action relief on his petition challenging the justice court’s dismissal of his appeal in the underlying criminal action. Specifically, he contends the superior court abused its discretion by not granting him relief on his claim that the respondent justice court judge had abused his discretion by denying, for an improper purpose, Runyon’s motion to accept a late filing of his appellant’s memorandum. Because the available record does not support Runyon’s contention, we affirm.

¶2 The relevant procedural facts are not disputed. After being convicted of disorderly conduct in Pima County Consolidated Justice Court, Runyon filed a timely notice of appeal. He did not, however, file an appellant’s memorandum. Approximately five months later, the justice court declared the appeal abandoned.<sup>1</sup> Runyon then filed his appellant’s memorandum and requested that the court accept his late filing, asserting he had good cause for the delay. After a hearing, the justice court denied his request.

¶3 Runyon then filed a petition for special action in superior court, arguing primarily that the justice court did not have the authority to dismiss his appeal. He also asserted that he had shown good cause for the delay in filing his memorandum and that the justice court based the denial of his motion to file the delayed memorandum on an improper reason. The superior court accepted jurisdiction of the special action but denied relief,

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<sup>1</sup>Runyon filed a Notice of Status and informed the court of a delay in obtaining a transcript of the trial. However, it is undisputed that he received the transcript over two months before the court declared the appeal abandoned.

finding the justice court had the authority to dismiss and did not abuse its discretion in dismissing the appeal as unperfected pursuant to Rule 9(b), Ariz. Super. Ct. R. App. P.–Crim.

¶4 When the superior court accepts jurisdiction of a petition for special action and rules on the merits, we review the court’s grant or denial of relief for an abuse of discretion. *Files v. Bernal*, 200 Ariz. 64, ¶ 2, 22 P.3d 57, 58 (App. 2001). We will not find an abuse of discretion unless the record contains no substantial support for the court’s decision or the court commits an error of law. *See id.*

¶5 An appeal from justice court to the superior court is perfected by filing a notice of appeal and then filing an appellant’s memorandum within sixty days of the notice of appeal. Ariz. Super. Ct. R. App. P.–Crim. 8(a)(2), 9(a). “A party that fails to perfect the appeal shall be deemed to have abandoned the appeal, and the disposition appealed from shall stand as if no appeal had been taken.” Ariz. Super. Ct. R. App. P.–Crim. 9(b). “For good cause, a party may file a motion for more time to file the memorandum.” Ariz. Super. Ct. R. App. P.–Crim. 8(b).

¶6 In this appeal, Runyon does not argue that he timely filed his appellant’s memorandum, thereby perfecting the appeal of his conviction, nor that the justice court lacked authority to dismiss his appeal. Rather, he contends only that the court gave an improper reason for denying his motion to accept the late filing, that granting the motion might be perceived as showing his counsel favoritism, even after accepting that he had

shown good cause for the delay. But the justice court’s order, which is largely illegible, does not appear to demonstrate any such improper purpose. And the transcript of the hearing at which the justice court heard and denied this motion is not in the record on appeal.<sup>2</sup>

¶7 As the appellant/petitioner, Runyon had the duty to attach to his petition for special action “an appendix of documents in the record before the trial court that are necessary for a determination of the issues raised by the petition.” Ariz. R. P. Spec. Actions 7(e). He also had the duty to ensure the record on appeal “contains the material to which [he] take[s] exception.” *State v. Zuck*, 134 Ariz. 509, 513, 658 P.2d 162, 166 (1982); *see also In re 6757 S. Burcham Ave.*, 204 Ariz. 401, ¶ 11, 64 P.3d 843, 846-47 (App. 2003). ““We may only consider the matters in the record before us. As to matters not in our record, we presume that the record before the trial court supported its decision.”” *6757 S. Burcham Ave.*, 204 Ariz. 401, ¶ 11, 64 P.3d at 846-47, *quoting Ashton-Blair v. Merrill*, 187 Ariz. 315, 317, 928 P.2d 1244, 1246 (App. 1996); *see also Zuck*, 134 Ariz. at 513, 658 P.2d at 166.

¶8 Thus, we cannot consider or address Runyon’s assertion that the justice court accepted that he had shown good cause for delay but then denied his motion based on an

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<sup>2</sup>Runyon did not include the transcript in an appendix to his petition for special action in the superior court. We note that on May 21, 2008, after he filed his notice of appeal from the superior court’s order, he designated the relevant transcript, indicating it was being prepared and would be provided to this court upon completion. However, the transcript was never submitted and is not part of the record on appeal. Additionally, based on the record, the transcript was not presented to or considered by the superior court.

unfounded concern regarding favoritism. Rather, we must assume the missing transcript would support the justice court's decision.

¶9 Based on the foregoing, we conclude the justice court did not err or abuse its discretion in denying Runyon's motion to file a delayed memorandum and in dismissing his appeal. Therefore, the superior court did not err or abuse its discretion in denying Runyon's petition for special action and we affirm.

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JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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J. WILLIAM BRAMMER, JR., Judge